

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT  
OF NEBRASKA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

\$93,120.00 IN UNITED STATES  
CURRENCY,  
Defendant.

Case No.: 8:09CV374

**FIRST AMENDED  
ANSWER TO  
VERIFIED  
COMPLAINT FOR  
FORFEITURE**

**1 Answer**

1. Paragraph one is admitted.
2. Paragraph two is admitted.
3. Paragraph three is admitted.
4. Paragraph four is admitted.
5. Paragraph five is admitted.
6. Paragraph six, including all of its sub-parts, is denied.
7. Paragraph seven is denied.

## **2 Affirmative Defenses**

1. Plaintiff lacks probable cause for institution of this forfeiture suit.
2. No substantial connection exists between the currency and any criminal offense.
3. The evidence in this case including, but not limited to, the currency, the dog sniff test that was performed, and the Voluntary Disclaimer of Ownership and Interest form, should be excluded for violations of Michael Fox's constitutional rights under the Fourth and Fifth Amendments in regards to the illegal seizure and detention of the currency and the illegal de facto arrest of Michael Fox.
4. Evidence of the Voluntary Disclaimer of Ownership and Interest form should be excluded for violation of Michael Fox's constitutional rights under the Fourth, Fifth and Fourteenth Amendments.
5. The Voluntary Disclaimer of Ownership and Interest form is not enforceable under the defense of duress.
6. Michael Fox is an innocent owner of the currency pursuant to 18 U.S.C. §983(d).
7. Evidence of the dog sniff test should be suppressed because the State, knowing that forfeiture litigation would result from the seizure, and lacking good faith, violated its duty to preserve critical evidence in this case — to wit — the currency itself. By Plaintiff's own admission, State law enforcement agents knowingly disposed of the currency

evidence by transferring it to a third party in exchange for cashiers checks. Michael Fox is now denied the opportunity to confront the evidence and perform his own test on the currency to challenge the integrity of the State's results (which were not even obtained according to standard test procedure since the State failed to demonstrate a control group by having the dog first examine currency not suspected of being traceable to drug transactions).

8. The forfeiture is, in any case, grossly disproportionate and violates Michael Fox's rights under the Eighth Amendment.

WHEREFORE PREMISES CONSIDERED, Michael Fox prays that Plaintiff's Complaint be denied in all things and for any further relief to which Michael Fox may be entitled.

ATTORNEY,

s/Timothy Nyberg

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